No. 82-948

Office - Supreme Court, U.S.
FILED
SEP 29 1982
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In The

Supreme Court of the United States

October Term, 1982

CPC INTERNATIONAL, INC., *et al.*,
Petitioners,

vs.

LISA P. GOLDBERG, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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No. 82-348

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Supreme Court of the United States

October Term, 1982

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Petitioners,

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For the reasons set forth herein, respondents respectfully request that this Court deny the petition for writ of certiorari.

STATEMENT OF THE CASE

Contrary to the impression petitioners seek to create, the Ninth Circuit Court of Appeals did not decide any questions involving federal antitrust laws, and no such questions are properly presented to this Court.

Petitioners filed this class action in California

state court alleging violations of California antitrust statutes and common law restraint of trade. Respondents removed the case to federal court on the basis of diversity of citizenship. 28 U.S.C. § 1441. The Ninth Circuit has ordered the case remanded to the state court from which it came on the ground that the "matter in controversy" requirement of 28 U.S.C. § 1332(a) was not met.

REASONS WHY THE WRIT SHOULD BE DENIED

The Ninth Circuit's decision is correct and unremarkable. None of the claims of the named parties or the class members, even after including recovery of attorneys' fees apportioned *pro rata*, remotely approaches the $10,000 amount required by 28 U.S.C. § 1332(a) for the exercise of federal jurisdiction. Petitioners have attempted to surmount this difficulty by arbitrarily attributing the potential recovery of attorneys' fees to the named parties alone or regarding such fees as a "common fund." Following *Zahn v. International Paper Co.*, 414 U.S. 291 (1973), the Ninth Circuit found that diversity was not present because the "matter in controversy" requirement was not met by each member of the plaintiffs' class. *Zahn* explicitly imposes this requirement. 414 U.S. at 300 & n.9. Petitioners do not claim that *Zahn* was incorrectly decided.

At bottom, petitioners' argument concerning attorneys' fees rests upon a reading of California law, Cal. Bus. & Prof. Code § 14750(a), implicitly rejected by the Ninth Circuit. Petitioners contend that under this California statute attorneys' fees either belong to the named plaintiffs only or comprise a common fund. Whether the Ninth Circuit was right or wrong in rejecting petitioners' argument, the question is one of California statutory construction, and as such does not warrant review by this Court.

Petitioners excitedly insist that the Ninth Circuit's decision will retard a federal policy to discourage "duplicative" state and federal antitrust actions. Whether or not that policy is actually implicated in this case is a point petitioners did not develop in the Petition for Certiorari and did not brief or argue below. Moreover, any such policy should be implemented directly, by narrowing or eliminating duplicative actions, not by creating class action rules that will dramatically and unnecessarily increase the workload of the federal courts by creating diversity jurisdiction in all state class action cases where citizenship is diverse and aggregate attorneys' fees awarded on a class-wide basis may exceed $10,000.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

RESPECTFULLY SUBMITTED,

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